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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176387
Party	Defendant Turbo Holdings, Inc. Turbo Holdings, Inc. 2600 Main St. Sayerville, NJ 08872
Correspondence Address	JOHN M. RANNELLS BAKER AND RANNELLS PA 626 N THOMPSON ST RARITAN, NJ 08869-1343 UNITED STATES jmr@br-tmlaw.com
Submission	Answer
Filer's Name	John M. Rannells
Filer's e-mail	jmr@br-tmlaw.com
Signature	/john rannells/
Date	04/10/2007
Attachments	91176387 answer.pdf ( 6 pages )(449015 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

	X	
	)	
MARMOT MOUNTAIN LLC.	)	
	)	
Opposer,	)	
	)	
vs.	)	<b>Opposition No. 91/176387</b>
	)	
	)	Ser. No. 78/772054
TURBO HOLDINGS, INC.	)	Ser. No. 78/772039
	)	
Applicant.	)	
	X	

**ANSWER**

Applicant, through its attorneys Baker and Rannells PA, alleges in response to the Notice of Opposition as follows:

1<sup>st</sup> Paragraph: Applicant has insufficient knowledge upon which to form a belief concerning each and every allegation in the first paragraph of the Notice of Opposition and leaves Opposer to its proofs.

2<sup>nd</sup> Paragraph: Applicant admits that Trademark Office database records currently indicate that ownership of U.S. Trademark Application Ser. No. 76/112630 is in the name of Opposer but otherwise Applicant has insufficient knowledge upon which to form a belief concerning the allegation of ownership set forth in the second paragraph of the Notice of Opposition and leaves Opposer to its proofs. Applicant admits that application Ser. No. 76/112630 includes, in the recitation of goods, the goods set forth by Opposer in the second paragraph of the Notice of Opposition. Applicant admits that

application Ser. No. 76/112630 was published for opposition on March 18, 2003 and that said application is the subject of an opposition proceeding filed by applicant.

3<sup>rd</sup> Paragraph: Applicant admits that Trademark Office database records currently indicate that ownership of U.S. Trademark Application Ser. No. 76/112629 is in the name of Opposer but otherwise Applicant has insufficient knowledge upon which to form a belief concerning the allegation of ownership set forth in the third paragraph of the Notice of Opposition and leaves Opposer to its proofs. Applicant admits that application Ser. No. 76/112629 includes, in the recitation of goods, the goods set forth by Opposer in the third paragraph of the Notice of Opposition. Applicant denies that application Ser. No. 76/112629 was published for opposition on March 18, 2003. Applicant admits that application Ser. No. 76/112629 is the subject of an opposition proceeding filed by applicant.

4<sup>th</sup> Paragraph: Applicant admits that it has based oppositions to registration of the design marks shown in application Ser. Nos. 76/112630 and 76/112629 upon registrations owned by Applicant, including inter alia, for the marks shown in the applications in issue in this proceeding, namely Ser. Nos. 78/772054 and 78/772039, however, Applicant denies that the marks/designs shown in Applicant's Ser. Nos. 78/772054 and 78/772039 are the "same" mark.

5<sup>th</sup> Paragraph: The allegations of paragraph 5 of the Notice of Opposition are unintelligible and accordingly cannot be directly responded to without clarification. To the extent the allegations are intended to assert that Opposer's marks are likely to be

confused with Applicant's marks in issue, the allegations are admitted. Applicant affirmatively asserts that the marks shown in Opposer's U.S. trademark applications Ser. Nos. 76/112630 and 76/112629, namely:



and



are likely to be confused with, *inter alia*, Applicant's marks shown in the applications in issue – 78/772054 and 78/772039, namely:



and



6<sup>th</sup> Paragraph: Admitted. However, Applicant affirmatively asserts that it has actual priority.

7<sup>th</sup> Paragraph: Applicant admits that in response to Office Actions dated June 20, 2006, wherein the Trademark Examining Attorney stated, *inter alia*:

Prior Registration

If the applicant is the owner of U.S. Registration Nos. 2515997, 2111782, 1907447 (attached) and others, then the applicant must submit a claim of ownership. 37 C.F.R. §2.36; TMEP §812.

that Applicant claimed ownership of the referenced registrations. Applicant further affirmatively asserts that Applicant was at the time and currently is the owner of the referenced registrations.

8<sup>th</sup> Paragraph: Opposer's allegations that the registrations "are all under Petitions . . ." is unintelligible. To the extent the allegations are meant to state that the referenced registrations are the subject of Petitions for Cancellation filed by Marmot, the allegations are admitted. In that regard, Applicant admits that its Reg. Nos. 1907447, 2111782, and 2515997 are the subject of Petitions for Cancellation filed by the Opposer herein and that the referenced registrations were the subject of Petitions for Cancellation at the time applicant filed application Ser. Nos. 78/772054 and 78/772039.

9<sup>th</sup> Paragraph: Admitted. However, Applicant affirmatively asserts that it had no obligation to inform the Examining Attorney that its prior registrations were the subject of Petitions for Cancellation.

10<sup>th</sup> Paragraph: The allegations of paragraph 10 of the Notice of Opposition are stated in the hypothetical. Applicant has insufficient knowledge upon which to form a belief concerning each and every allegation in the tenth paragraph of the Notice of Opposition and leaves Opposer to its proofs.

11<sup>th</sup> Paragraph: Applicant denies that by not informing the Examining Attorney about either of Opposer's prior filed applications or the pending cancellation actions against the claimed prior registrations, that Applicant withheld a material fact from the Examining Attorney that is relevant to the examination of application Ser. Nos. 78/772054 and 78/772039. Applicant further affirmatively asserts that in claiming ownership of Reg. Nos. 1907447, 2111782, and 2515997 that Applicant was complying with a requirement of the Trademark Examining Attorney.

12<sup>th</sup> Paragraph: Applicant denies that Opposer can or will be damaged if applications Ser. Nos. 78/772054 and 78/772039 are allowed to proceed to registration, as Applicant has priority and Opposer is not entitled to registration of its pending and opposed applications.

### **APPLICANT'S AFFIRMATIVE DEFENSES**

1. The Notice of Opposition fails to state a claim upon which relief may be granted.
2. Applicant has priority of use of its marks.
3. Opposer is not and cannot be damaged by Applicant's marks proceeding to registration, as Applicant has priority of use.
4. Applicant had no duty to inform the Examining Attorney of the Opposer's pending applications or that the Applicant's Reg. Nos. 1907447, 2111782, and 2515997 were the subject of Petitions for Cancellations filed by the Opposer herein.

**WHEREFORE**, Opposer prays that the opposition filed by Marmot Mountain LLC to Application Ser. Nos. 78/772054 and 78/772039 be dismissed.

Respectfully submitted,

BAKER AND RANNELLS PA



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John M. Rannells  
Attorney for Applicant  
The Henderson Bldg.  
575 Route 28 – Suite 102  
Raritan, New Jersey 08869  
(908) 722-5640  
jmr@br-tmlaw.com

Dated: April 10, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing ANSWER, In re Marmot Mountain LLC v. Turbo Holdings, Inc., Opp. No. 91/176387 was forwarded by first class postage pre-paid mail by depositing the same with the U.S. Postal Service on this 10<sup>th</sup> day of April, 2007 to the Opposer at the following address:

Mark B. Harrison, Esq.  
VENABLE  
P.O. Box 34385  
Washington, D.C. 20043-9998

DATED: April 10, 2007



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John M. Rannells